

Application No. 10/826,651  
Response to 6 October 2004 Non-Final Office Action

REMARKS

Claims 1-37 are pending. By this Amendment, claims 4, 11, 13-16, 19, 21, 26, 28, and 30 are amended.

Claim 4 is amended to recite "multiplicity of top panel air passages" in lieu of "plurality of top panel air passages," the former having antecedent basis in claim 1, from which claim 4 depends.

Claim 11 is amended to recite "the plurality of vent part air passages" in place of "the multiplicity of vent part air passages," the former having antecedent basis in claim 1, from which claim 11 depends.

Claim 13 is amended to recite "a top panel having a bottom surface" and "an air permeable filter attached to the bottom surface of the top panel," the added limitations, "bottom surface" and "an air permeable filter attached to the bottom surface of the top panel" having support generally, e.g., in Figures 1, 6, 6a, 6b, 7, 7a.

Claim 14 is amended to recite "a top panel ... comprising a multiplicity of discrete top panel air passages fluidly communicating an interior of said device and an exterior of said device." Support for the foregoing amendment to claim 14 is present, e.g., in originally filed claim 1.

Claim 15 is amended to recite "an interior with a vent" in place of "an interior and with a vent," to more clearly state the subject matter regarded as the invention. Claim 15 is further amended to recite "the filter material secured to the at least one vent part and to the interior

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surface of the top panel" rather than "the filter material secured to one of the at least one vent part and to the top panel," to more clearly state the subject matter regarded as the invention.

Claim 16 is amended to recite "securing an air permeable filter material to an interior surface of the top panel" in place of "securing an air permeable filter material to the top panel," to more clearly state the subject matter regarded as the invention.

Claims 19 and 21 are amended to recite "multiplicity of air passages" in place of "multiplicities of air passages," the former having antecedent basis in claim 15, from which both depend.

Claim 26 is amended to recite "a multiplicity of discrete vent part air passages" in lieu of "a plurality of discrete vent part air passages," to more clearly claim the subject matter regarded as the invention.

Claim 28 is amended to recite "the multiplicity of top panel air passages," thereby correcting antecedent basis found in claim 26.

Claim 30 is amended to depend from claim 28, rather than from claim 27, "the intermediate ply" having antecedent basis in claim 28, thereby more clearly claiming the subject matter regarded as the invention.

No new matter has been added by the amendments to the pending claims. In view of the foregoing amendments to the claims, reconsideration and allowance of all pending claims are respectfully requested.

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35 U.S.C. § 112

Claims 1-37 are rejected under 35 U.S.C. § 112, ¶ 2 as indefinite. The rejection states that

[f]or claims 1, 13, 14, 15, 16, and 26, it is not clear whether the claimed a multiplicity of discrete top panel air passages and the claimed a plurality of discrete vent part air passages are the same air passages. If they are different, then, what the claimed multiplicity of discrete top panel air passages is and where is the support in the disclosure for the claimed multiplicity of discrete top panel air passages.

Applicant respectfully traverses this rejection. The claimed top panel air passages and vent part air passages are two different limitations and are submitted to be neither vague nor indefinite. Support for the discrete top panel and vent part air passages may be found, e.g., in the paragraph bridging pages 7-8 of the instant specification, in originally filed claim 1, and generally in Figures 2-4. For the foregoing reasons, the Examiner is respectfully requested to withdraw the rejection under 33 U.S.C. § 112, ¶ 2.

35 U.S.C. § 102

Claims 1, 9, 11-12, 15-17, 23-26, 33, and 35-37 are rejected under 35 U.S.C. § 102(c) as anticipated by U.S. 6,308,472 ("Coulton 472"). Applicants respectfully traverse this rejection.

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In order to establish a prima facie case of anticipation, every limitation in the claim asserted to be anticipated must be disclosed in the single document cited against the claim.<sup>1</sup>

Regarding claim 1, Applicants first dispute that Coulton 472 discloses or suggests a top panel. The top panel asserted by the Office Action is actually a lateral portion 38 of the web 32 having spacers 40, none of which define air passages, much less discrete air passages.<sup>2</sup> Thus, Coulton 472 neither discloses nor suggests a multiplicity of discrete air passages in the top panel. Applicant next respectfully points out that Coulton 472 neither discloses nor suggests at least one vent part with a plurality of discrete vent part air passages. The vent 30, asserted by the rejection as a vent part, has no structure with, inter alia, a plurality of discrete vent part air passages. Moreover, the Adjustable Roof Ridge Vent of Coulton 472 cannot have at least one vent part in a contacting relation with the interior surface of the top panel because Coulton 472 fails to disclose a top panel. Because Coulton 472 fails to disclose or suggest the foregoing limitations, Coulton 471 does not anticipate claim 1.

Regarding claim 15, Coulton 472 fails to disclose or suggest a vent with a top panel having a multiplicity of discrete top panel air passages. Because Coulton 472 fails to disclose or

<sup>1</sup> See M.P.E.P. § 2131 ("A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).").

<sup>2</sup> See Coulton, Figures 1-3, 6, and 8; column 4, line 43, et seq. ("The vent 30 of the present application has some similarities with the previously referenced roll-form vent disclosed in U.S. Pat. No. 5,673,521. For instance, the vent 30 is formed as an indeterminate-length, single-sheet web 32 of thermoformable plastic material having a longitudinal medial hinge, or centerline, 34 dividing the web 32 into a pair of identical longitudinally extending lateral portions, or side flaps, 36 and 38, which, during installation, are capable of being disposed at a dihedral angle relative to one another. Each web portion 36 and 38 has a plurality of hollow spacer elements 40 disposed in a plurality of longitudinal rows extending along the lengthwise edge margins of the web portions 36 and 38. The spacer elements 40 project from a face 42 of the web 32 and, when the vent 30 is installed, space the face 42 of the web 32 from the roof 10 to provide ventilation passageways therebetween. The layout, or pattern, of the spacer elements 40 is particularly

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suggest a top panel, Coulton 472 also fails to disclose or suggest at least one vent part contacting the top panel interior surface. Coulton 472 additionally fails to disclose or suggest at least one vent part comprising a weatherproof material defining a multiplicity of discrete vent part air passages and, for reasons stated above, a filter material secured between one of the at least one vent part and top panel. Because Coulton 472 fails to disclose or suggest the foregoing claim limitations, claim 15 is not anticipated by Coulton 472.

Regarding claim 16, Coulton 472 fails to disclose a vent part and a top panel comprising a weatherproof material defining a multiplicity of discrete air passages. Because Coulton 472 fails to disclose a top panel, Coulton 472 also fails to disclose securing an air permeable filter material to the top panel. Hence, Coulton 472, by failing to disclose or suggest the foregoing claim limitations, fails to anticipate claim 16.

With respect to claim 26, Coulton 472 fails to disclose or suggest a vent comprising a top panel having a multiplicity of discrete top panel air passages or a vent part comprising a material defining a plurality of discrete vent part air passages. Because Coulton 472 fails to disclose a top panel, Coulton 472 also fails to disclose a filter material secured to the top panel. Since Coulton 472 fails to disclose or suggest the foregoing claim limitations, claim 26 is not anticipated by Coulton 472.

As shown above, Coulton 472 fails to disclose or suggest limitations present in, thereby failing to anticipate, each of independent claims 1, 15, 16, and 26. The other rejected claims depend directly or indirectly from the foregoing independent rejected claims. Therefore, the other rejected claims are not anticipated by Coulton 472 as well.

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designed to resist compression of the vent 30 during and after installation and to afford ready rolling and

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Claims 1, 9, 11-12, 15-17, 23-26, 33, and 35-27 are rejected under 35 U.S.C. § 102(e) as anticipated by U.S. 6,298,613 ("Coulton 613"). Applicants respectfully traverse this rejection. As shown above, each claim limitation must be disclosed before a document can anticipate a claim (see footnote 1).

Regarding claim 1, Coulton 613 is asserted by the rejection as showing a roof ridge vent with a top panel 18, a vent part 30, and a filter 50 secured to the bottom surface of the vent part and to the top panel. Coulton 613 actually discloses a vent 30 with a mat 32<sup>3</sup> overlain by a cap shingle 18<sup>4</sup> and having a filter material 50 secured to the roof-confronting surface 42 of the mat 32.<sup>5</sup> Coulton 613, by disclosing a cap shingle 18 overlaying the vent 30, thus fails to disclose a top panel having a multiplicity of discrete top panel air passages. Coulton 613, by disclosing a vent 30 formed as an indeterminate-length, single-sheet, openwork mat or web 32,<sup>6</sup> fails to disclose or suggest at least one vent part defining a plurality of discrete vent part air passages.

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unrolling during manufacture and installation.").

<sup>3</sup> See, Coulton 613, column 4, line 27 et seq. ("For instance, the vent 30 is preferably formed as an indeterminate-length, single-sheet, openwork mat, or web, 32 of randomly convoluted polymeric filaments.").

<sup>4</sup> See, Coulton 613, column 4, line 9 et seq. ("In accordance with the present invention, as will be fully discussed, a vent 30 is interposed between the cap shingles 18 and the underlying portions of the roof 10.").

<sup>5</sup> See, Coulton 613 column 4, line 57 et seq. ("A strip of air permeable filter material 50 is secured to the roof confronting surface 42 of the mat 32. The filter 50 permits air to flow outwardly in the manner illustrated by the arrows in FIG. 2, while preventing insects, rain, snow, blowing foreign objects, and the like from entering in the opposite direction. Preferably, as illustrated in FIGS. 1 and 2, a continuous length of filter material 50 is thermally or adhesively bonded to the apex portions 48 of the cusps 44 and extends to the edge flanges 52, 54 of the lateral flaps 36, 38.").

<sup>6</sup> See, Coulton 613, column 4, line 27 et seq. ("For instance, the vent 30 is preferably formed as an indeterminate-length, single-sheet, openwork mat, or web, 32 of randomly convoluted polymeric filaments.").

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Because the foregoing limitations to claim 1 are not disclosed or suggested by Coulton 613, Coulton 613 fails to anticipate claim 1.

With respect to claim 15, Coulton 613 fails to disclose or suggest a vent comprising a top panel having a multiplicity of discrete top panel air passages and at least one vent part comprising a weatherproof material defining a multiplicity of discrete part air passages. Hence, Coulton 613 fails to anticipate claim 15.

Regarding claim 16, Coulton 613 fails to disclose or suggest a top panel and vent part comprising a weatherproof material defining a multiplicity of discrete air passages or securing an air permeable filter material to the top panel. Hence, Coulton 613 fails to anticipate claim 16.

With respect to claim 26, Coulton 613 fails to disclose or suggest a vent comprising a top panel having a multiplicity of discrete top panel air passages, a vent part comprising a material defining a plurality of discrete vent part air passages, or a filter material secured to the top panel. Therefore, Coulton 613 does not anticipate claim 26.

Independent claims 1, 15, 16, and 26, as shown above, are not anticipated by Coulton 613. The other rejected claims depend directly or indirectly from one of the rejected independent claims. Therefore, the other rejected claims are not anticipated by Coulton 613 as well.

Claims 13-16 and 18-25 are rejected under 35 U.S.C. § 102(b) as anticipated by U.S. 5,704,834 ("Sells 834"). Applicants respectfully traverse this rejection. Sells 834 discloses an uppermost layer or cover defining a connecting member 28 which interconnects the vent parts 24, 26 and extends over the ridge board 16 and vent opening 22.<sup>7</sup> Sells 834 does not disclose or

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<sup>7</sup> See, Sells 834, column 2, line 5 et seq. ("Each of the vent parts 24,26 consist of a number of layers or courses 30 of a corrugated material. The uppermost layer or cover defines a connecting member 28 which interconnects the vent parts 24,26 and extends over the ridge board 16 and vent opening 22. The

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suggest that the connecting member has air passages providing for fluid communication between the structure interior and the environment. Sells 834 also discloses a fabric 38 covering outer edges 36 of the vent parts 24, 26.<sup>8</sup> Sells 834 fails to disclose the fabric 38 secured to the bottom surface of either of the vent parts 24, 26.

With respect to claim 13, Sells 834 fails to disclose or suggest an air permeable filter attached to the bottom surface of the top panel. Therefore, Sells 834 fails to anticipate claim 13.

Regarding claim 14, Sells 834 fails to disclose or suggest a multiplicity of discrete top panel air passages fluidly communicating and exterior of said device and in the interior of said device and a filtering material extending between the top panel and the bottom surface of one of the vent parts. Therefore, Sells 834 does not anticipate claim 14.

With respect to claim 15, Sells 834 fails to disclose or suggest filter material secured to the at least one vent part and to the interior surface of the top panel. Hence, Sells 834 does not anticipate claim 15.

Regarding claim 16, Sells 834 fails to disclose or suggest securing an air permeable filter material to an interior surface of the top panel. Therefore, Sells 834 does not anticipate claim 16.

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corrugations define passages 32 which extend through the vent parts 24,26 substantially parallel with one another between the inner edges 34 of each vent part 24,26 to the outer edges 36 thereof. Accordingly, the passages 32 define a vent passage which vents the attic or upper story of the structure covered by the roof 12 through a vent path defined by the vent openings 22 and the passages 32. The passages vent the vent openings to ambient atmosphere. More details of the basic ventilating cap 10 are disclosed in the aforementioned U.S. Pat. No. 3,949,657.").

<sup>8</sup> See, Sells 834, column 2, line 20 et seq. ("According to the present invention, the outer edges 36 of at least one of the vent parts 24,26 is covered by a flexible, air permeable, moisture repelling fabric generally indicated by the numeral 38. The fabric 38 may be a nonwoven, spunbonded fabric consisting of randomly arranged polypropylene fibers that is sold as "Typar 3121" by Snow Filtration Company, Cincinnati, Ohio.").

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As shown above, independent claims 13, 14, 15, and 16 are not anticipated by Sells 834. The other rejected claims depend directly or indirectly from one of the rejected independent claims. Therefore, the other rejected claims are not anticipated by Sells 834 as well.

35 U.S.C. § 103

Claims 2-8, 10, 13-14, 18-22, 27-32, and 34 are rejected under 35 U.S.C. § 103(a) as obvious over Coulton 472 or Coulton 613, in view of U.S. 5,947,817 ("Morris 817"), U.S. 5,934,995 ("Morris 995"), or 5,651,734 ("Morris 734").

Applicant respectfully traverses this rejection because, *inter alia*, the rejection fails to refer to portions in the documents cited against the rejected claims which would support the required motivation for modification. The rejection alternatively fails to assert and establish that the required motivation was generally present in the art at the time of the invention. The rejection first states that the "roof ridge vent of [Coulton 472] or [Coulton 613] discloses all that is recited in claims 2-8, 10, 13, 14, 18-22, 27-32, 34 except for the vent housing with a plurality of stacked panels of the corrugated weatherproof sheet material." The rejection then asserts "Morris et al. [apparently Morris 817, Morris 995, or Morris 734] teaches a roof ridge vent comprising a vent housing with a plurality of stacked panels of the corrugated weatherproof sheet material same as claimed." The rejection finally makes the conclusory statement, apparently based on the unsupported opinion of the Examiner, that "it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the vent housing of Morris et al. for the vent housing of Coulton et al. in order to improve the ventilation efficiency."

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In order to establish a prima facie case of obviousness, a rejection must, inter alia, establish a proper motivation for modifying the documents cited against the claims.<sup>9</sup> The motivation to modify the documents cited against the claims must be present in the documents themselves or must be generally present in the prior art at the time of the invention, not in the instant application.<sup>10</sup> If the proposed modification renders the prior art unsatisfactory for its intended purpose there is no motivation for the proposed modification.<sup>11</sup> That the disclosures of the documents cited against the claims can be modified or that the asserted modification is within the ability of a person of ordinary skill in the art is not sufficient to establish the required motivation.<sup>12,13</sup> Moreover, neither conclusory statements within the rejection nor subjective

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<sup>9</sup> See, M.P.E.P. § 2142 ("To establish a prima facie case of obviousness, ... there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. ... The teaching or suggestion to make the claimed combination ... must ... be found in the prior art, and not based on applicant's disclosure. *In re Vacck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).").

<sup>10</sup> See M.P.E.P. § 2142 ("The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.").

<sup>11</sup> See M.P.E.P. § 2143.01 ("If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*,

733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984) (Claimed device was a blood filter assembly for use during medical procedures wherin both the inlet and outlet for the blood were located at the bottom end of the filter assembly, and wherein a gas vent was present at the top of the filter assembly. The prior art reference taught a liquid strainer for removing dirt and water from gasoline and other light oils wherin the inlet and outlet were at the top of the device, and wherein a pet-cock (stopcock) was located at the bottom of the device for periodically removing the collected dirt and water. The reference further taught that the separation is assisted by gravity. The Board concluded the claims were prima facie obvious, reasoning that it would have been obvious to turn the reference device upside down. The court reversed, finding that if the prior art device was turned upside down it would be inoperable for its intended purpose because the gasoline to be filtered would be trapped at the top, the water and heavier oils sought to be separated would flow out of the outlet instead of the purified gasoline, and the screen would become clogged.).

<sup>12</sup> See M.P.E.P. § 2143.01 ("The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.").

<sup>13</sup> See M.P.E.P. 2143.01 ("A statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the claimed invention was made' 'because the references relied upon teach that all aspects of the claimed invention were individually

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opinion stated in the rejection are sufficient to establish the required motivation to modify the documents cited against the claims.<sup>14</sup> Indeed, if the rejection asserts that the required motivation was generally present in the art at the time of the invention, the Examiner may be required to execute an affidavit or declaration to that effect so that the Applicant may have the opportunity to explain or dispute the assertions therein.<sup>15</sup>

The rejection fails to cite portions of the cited documents which would provide a basis for the motivation to modify the disclosure of Coulton 472 or Coulton 613 with the disclosure of Morris 817, Morris 995, or Morris 734. Therefore, a prima facie case of obviousness has not

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known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references. Fx parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Int. 1993). See also, In re Kotzab, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000) (Court reversed obviousness rejection involving technologically simple concept because there was no finding as to the principle or specific understanding within the knowledge of a skilled artisan that would have motivated the skilled artisan to make the claimed invention); Al-Site Corp. v. VSI Int'l Inc., 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999) (The level of skill in the art cannot be relied upon to provide the suggestion to combine references.).") (emphasis added).

<sup>14</sup> See, In re Lee, 61 U.S.P.Q.2d 1430, 1434 (Fed Cir. 2002) ("The examiner's conclusory statements that the demonstration mode is just a programmable feature which can be used in many different device[s] for providing automatic introduction by adding the proper programming software and that another motivation would be that the automatic demonstration mode is user friendly and it functions as a tutorial do not adequately address the issue of motivation to combine. This factual question of motivation is material to patentability, and could not be resolved on subjective belief and unknown authority. It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to [use] that which the inventor taught against its teacher. W.L. Gore v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983). Thus the Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion.") (internal quotation marks omitted) (emphasis added).

<sup>15</sup> See M.P.E.P. § 2144.03 ("As the court held in Zurko, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. In re Zurko, 59 USPQ2d 1693, 1697.... If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2) [When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons].") (emphasis added).

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been established. Rather than cite portions of Coulton 472, Coulton 613, Morris 817, Morris 995, and/or Morris 734 providing the required motivation for the asserted modification, the rejection apparently states the Examiner's opinion for support. As shown above with respect to footnotes 13-15, that a person of ordinary skill in the art could have made the proposed modification, that the proposed modification was within the ability of the person of ordinary skill in the art, or the unsubstantiated opinion of the Examiner is not sufficient to establish the required motivation. Since the required motivation is not established by the fact that a person of ordinary skill in the art could have made the proposed modification, that the proposed modification was within the ability of the person of ordinary skill in the art, or the unsubstantiated opinion of the Examiner, a *prima facie* case of obviousness has not been established *a fortiori*. If this rejection is maintained, the Examiner is respectfully required to either 1) cite portions of Coulton 472, Coulton 613, Morris 817, Morris 995, and/or Morris 734 wherein the required motivation is present or 2) execute an affidavit or declaration for the record asserting that the required motivation was generally present in the art at the time of the invention and which Applicants may subsequently contradict or explain (see footnote 17).

Because a *prima facie* case of obviousness has not been established, the Examiner is respectfully requested to withdraw the rejection.

Claims 1-12, 17, and 26-37 are rejected under 35 U.S.C. § 103(a) as obvious over Sells 834, in view of Coulton 472 or Coulton 613. Applicant respectfully traverses this rejection. The rejection asserts that "[t]he roof ridge vent of [Sells 834] as above includes all that is recited in claims 1-12, 17, 26-37 except for the filter material secured to the bottom surface of the vent part." The rejection further states that "Patents to Coulton et al. [apparently Coulton 472 and/or

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Coulton 613] teach a roof ridge vent with filter (44 or 50, respectively) secured to the bottom surface of the vent part same as claimed." Without citing portions of Sells 834, Coulton 472, or Coulton 613 to support the required motivation for the posited modification, the rejection then concludes, apparently expressing the Examiner's opinion. "Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to secure the filter of [Sells 834] to the bottom surface of the vent part as taught by Coulton et al. in order to improve the ventilation efficiency." As shown above, unsupported opinions cannot serve as the basis for the required motivation to modify the disclosures of Sells 834 with the disclosures of Coulton 472 or Coulton 613. Because 1) supporting portions (if any exist) of Sells 834, Coulton 472, and/or Coulton 613 have not been cited to support the required motivation, 2) the required motivation has not been established as existing generally in the art at the time of the invention, and 3) the unsupported opinion expressed is not sufficient to establish the required motivation, a prima facie case of obviousness has not been established. If this rejection is maintained, the Examiner is respectfully required to execute an affidavit or declaration asserting that the required motivation was generally present in the art at the time of the invention, which Applicants may subsequently explain or dispute. Because a prima facie case of obviousness has not been established, the Examiner is respectfully requested to withdraw the rejection.

Double Patenting

Claims 1-37 are rejected under the judicially created doctrine of obviousness-type double patenting, the rejection asserting claims 1-37 are unpatentable over claims 1-18 of U.S. 6,450,882 and over claims 1-23 of U.S. 6,623,354. Applicants respectfully traverse this

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rejection. Applicants respectfully traverse these rejections. However, in order to advance the prosecution of this application, Terminal Disclaimers are filed herewith. In view of the Terminal Disclaimers, the Examiner is respectfully requested to withdraw the rejection.

Conclusion

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

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